

33382
DO

SERVICE DATE - MARCH 11, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 170)

UNION PACIFIC RAILROAD COMPANY — ABANDONMENT — IN
POLK COUNTY, IA

Decided: March 10, 2003

By decision served on January 16, 2002, Union Pacific Railroad Company (UP) was granted authority to abandon a 3.72-mile line of railroad extending from milepost 221.10 near SE 18th Street to milepost 217.38 near SW 30th Street in Des Moines, Polk County, IA. To allow the offer of financial assistance (OFA) process to move forward following the filing of an OFA by Mid-America Railroad, L.L.C., the public use and trail use procedures were postponed in a decision served on March 22, 2002 (March 22 decision). The OFA was withdrawn on July 2, 2002. In a decision served on July 9, 2002 (July 9 decision), the March 22 decision was vacated, thus making the prior abandonment authorization effective on July 9, 2002. By decision and certificate of interim trail use or abandonment (CITU) served on September 12, 2002, a 180-day period, calculated from the service date of the decision, was authorized for the City of Des Moines, IA (the City), to negotiate an interim trail use/rail banking agreement with UP for a portion of the line from milepost 220.57 to milepost 217.38. That decision also authorized a 180-day period, calculated from the effective date of the July 9 decision, to allow the negotiation of a public use condition for a portion of the line from milepost 219.32 to milepost 217.38. The public use condition expired on January 5, 2003. The trail use negotiating period is scheduled to expire on March 11, 2003.

On February 3, 2003, the City filed a petition for an extension of the trail use negotiating period for 115 days (until July 4, 2003) and for an extension of the public use negotiating period for 180 days (until July 4, 2003). The City states that it is engaged in various investigations concerning the railroad bridge and the right-of-way, which it expects will be completed expeditiously. UP filed a reply on February 3, 2003, stating its willingness to continue trail use negotiations with the City.¹

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period

¹ UP opposes extension of the public use condition.

may be extended.² The City has shown that the additional time is necessary to complete negotiations. An extension of time will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the CITU negotiating period will be extended for a period of 115 days from March 11, 2003. However, under 49 U.S.C. 10905 and 49 CFR 1152.28(b), a public use condition cannot be extended beyond the 180-day period after the effective date of the decision authorizing the abandonment. Because the line was subject to an OFA, the 180-day period began to run on July 9, 2002, when the OFA process ended. The 180-day public use negotiation period thus ended on January 5, 2003, and cannot be extended. Therefore, the City's request for a public use condition will be denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The City's request to extend the CITU negotiating period is granted.
2. The CITU negotiating period is extended until July 4, 2003.
3. The City's request to extend the public use condition is denied.
4. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

² See Rail Abandonments — Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).